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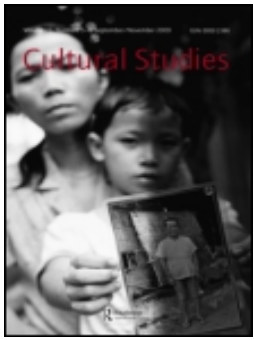
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THE LIMITS OF DEMOCRACY

Transgender sex work and citizenship

During 1998 Buenos Aires witnessed a singular event: in the context of a broad legal renewal, street sex work was decriminalized. This decision proved to be highly problematic though, and led to a series of juridical reformulations that culminated in the delimitation of an official red light district in 2004. Nonetheless, although it might be thought that the legalization of this area as a site for street sex work (de facto aimed at trans sex workers) would stabilize the conflict, the regulation of sex work continues to be the object of an intense political struggle and the current situation is still far from achieving a fair agreement for sex workers. Certainly, although these debates might seem focused on the legal status of sex work, they have been addressing much broader issues that appeal to profound moral beliefs that are in turn intersected by the social organization of gender and sexuality. Thus, departing from this broader scope, in this essay I will analyse the history of this legal norm for taking up the question of the performativity of sex work configured as a social practice. In this context, I will try to show the modes in which the regulation of sexual desire implied several consequences for the definition of the public space itself and, at the same time, it implied the stabilization of the parameters through which citizenry and its rights to use urban space could be determined. It is from this point of departure that I will point to the link between the definition of sex work and the configuration of a 'legitimate sexuality', and from here, I will show the role of sex work in the configuration of the imaginary of citizenship and the public space.

Keywords sex work; transgender; sexuality; citizenship; public space; regulation; power

During 1998 Buenos Aires witnessed a singular event: in the context of a broad legal renewal that took place after the new local constitution was sanctioned in 1996, street sex work was decriminalized. This decision proved to be highly problematic though, and led to a series of juridical reformulations that culminated in the delimitation of an official red light district in a specific part of Buenos Aires Main Park in 2004. Nonetheless, although it might be thought that the legalization of this area as a site for street sex work (*de facto* aimed at trans sex workers) would stabilize the conflict, that proved not to be the case. On the contrary, the regulation of sex work continues to be the object of an intense

political struggle and the current situation is still far from achieving a fair agreement for sex workers. In fact, facing the state of affairs on an international scale with regards to the legal status of sex work, it is easy to see that these discussions tend to assume a passionate character, most of the time ending up in long-lasting, even seemingly irresolvable conflicts. Although it seems these debates are focused on the legal status of sex work, they are in fact addressing much broader issues that appeal to profound moral beliefs, which in turn are intersected by the social organization of gender and sexuality.

In the case of Buenos Aires, this has been dramatized most apparently. Right from the beginning, the reconfigurations of citizenship in the context of the new constitution of Buenos Aires and the new laws on sex work generated an ongoing political struggle that, on the one hand, brought forward a myriad of discourses articulating a phobic imaginary centred on trans sex workers, showing the violence to which trans communities and trans sex workers in particular are exposed. On the other hand, this moral reaction, organized to provide reassurances of gender normativity, led to the enactment of a more elaborate socio-sexual imaginary in which the regulation of sexuality proved to be central to normative forms of subjectification presupposed by the construction of the ideal citizen. It was in this context then, that the mass-press built a whole case around the legal status of sex work that caught the eye of the media for more than two years on a daily basis and continues to be a contested issue to this day. This legal reform subsequently enacted by the new City Code of Rules and Regulations¹ produced a protracted battle over whether fewer than a thousand words should or should not be included in the Code engendering an expansive discursive space whose repressive impulses re-sexualized the city in a new way.

The conflictive debates on sex work that have taken place in Buenos Aires for more than 10 years now can be read as intended to constrain and put aside certain sexual practices from the public domain. But at the same time, they can also be seen as a way to apprehend and give shape to the ways in which desire and sex actually circulate within the urban space. Indeed, along this journey the broader society of Buenos Aires confronted the internal limits of its space for sexual desire, locating in sex work (and in trans sex work in particular) the core around which it could organize its borders and re-invent its excesses. This ongoing battle has put at stake the ways sexual desire is allowed to circulate within public urban spaces as well as the appropriate and non-appropriate ways in which citizens should behave in relation to their sexual desires within these spaces and, more fundamentally, within the sight of others.

This open debate on the visibility of sex in relation to the private and public domains included the discussion about the different degrees of visibility of sex work according to a differential scale that organizes what can legitimately become visible. At the same time, it was the occasion for sex work incitement through the production of a domain of 'the invisible'. Between the poles of correctness and incorrectness, the ideal normative forms

for sexual desire, the acceptable but debatable ones and the ‘unbearable’ non-normative ones, they all found their place within this grid, which once again underpins Gayle Rubin’s groundbreaking argument over the socio-sexual hierarchy (Rubin 1984). But more fundamentally, the problem of visibility was one through which the public space could be circumscribed. As I will try to show through the analysis of the history of this legal norm, the regulation of sexual desire implied several consequences for the definition of the public space itself and, at the same time, it implied the stabilization of the parameters through which citizenry and its rights to use urban space could be determined.

For doing so, I will take as a point of departure the question of the performativity of sex work configured as a social practice. To think about the performativity of sex work means in this context to attend to the ways in which sex work is constituted. It means as well to pose the question of how sex work is configured in relation to an (illegal) economy understood as a social practice, and how as a result, sex work becomes a legal figure. In other words, considering that sex work has a key role in the constitution of urban public space, I understand sex work both as a regulated socio-sexual practice and as a pivotal construct for the configuration of a legitimate sexuality within a given society. It is from this point of departure that I will point to the link between the definition of sex work and the configuration of a ‘legitimate sexuality’, and from here, I will show the role of sex work in the configuration of the imaginary of citizenship and the public space.

The uses of public space and the menace of sex work

The decriminalization of street sex work took place in Buenos Aires in March 1998, when the new City Code of Rules and Regulations was sanctioned.² This new Code was intended to replace the former legislation ruling in the city and its goal was to establish a democratic legal frame that would protect the liberties of its citizens. This change was indisputably necessary since the former legislation consisted in a compendium of edicts redacted by the City Police Force in 1946 according to which the Police Force had the capacity to legislate and judge at the same time (Centro de Estudios Legales y Sociales 1998a, 1998b). It was in the frame of the Police Edicts that the moral figures of ‘Scandal’ and ‘Cross-dressing’ emerged within public discourse and opened the path for the criminalization of street sex work and for the persecution of trans people.

Stepping away from the positivist legal tradition of the Edicts, based in what has been called ‘*Derecho Penal de Autor*’ – ‘Criminal Law Focused on Actors’ – this new Code was committed to the modern law tradition of what is called ‘*Derecho Penal del Acto*’ – ‘Criminal Law Focused on Acts’ – which is basic requirement for a democratic rule of government (Tiscornia 2004). That

is to say that instead of criminalizing certain subjects for 'what they are' or for confronting certain morality, as in the case of the Criminal Law Focused on Actors, the Code was intended to just sanction certain acts as long as they led to a demonstrable damage for a third party (which means that there would be a punishment only in those cases where a third party demands it) (Zaffaroni 1998). So when the new Code was approved and these figures of 'Scandal' and 'Cross-dressing' among others were obviously not included as punishable offences, both sex work and cross-dressing ceased to be crimes. In this way, street sex workers and trans people could be protected from police harassment, extortion and brutality – all of these, common practices to which these communities had been exposed.³ Instead of establishing a list of criminalized set of acts, conducts and subjects, this Code pretended to provide their citizens rules for coexistence, establishing their duties and rights.

Although it was essential to democratize the law, some politically conservative sectors, joined by some neighbourhoods where street sex work was active, fiercely reacted against it. Prompted by the Police Lobby and the media, the moral panic assumed such an intense character, that the social scene was immediately characterized in the press as being immersed in a 'state of war'. Such is the characterization offered of the situation by *La Nación*, one of the three most prominent national newspapers. Although it would be impossible to find such an overtly discriminatory tone today, this newspaper broadcasted in its headlines of 11 March 1998: 'Neighbours versus Transvestites'⁴ – '*Vecinos versus Travestis*'.^{5,6} In the same line, *Clarín*, one of the other most important national newspapers, announced that the problem of the Code revolved around 'the juridical frame that it would give to prostitution' (*Clarín* 5 March 1998),⁷ and that there was no agreement with regards to 'an article that would sanction the repression of the behaviour of sexual minorities' (*Clarín* 4 March 1998).⁸

These brief extracts already show us that the fear incited by the decriminalization of sex work spread far beyond the specific case of sex work, and that it was the whole normative framework that governs gender and sexuality that was at stake. The antagonism produced by the stereotypical figures of the 'neighbour' and the 'transvestite'⁹ – which were extensively used by the media and in political debates – was functioning in this context as a way of re-stabilizing the normative socio-sexual imaginary that regulates the scale that distinguishes among more legitimate and less legitimate, including non-legitimate forms of sexual conduct. Hence, this relates to the address of 'sexual minorities' as well. This means that configured as a non-legitimate sexual practice – either criminalized or not – sex work operated in this context as a key figure for sustaining the whole sexual normative. That is the reason why when it became decriminalized, and therefore its social legitimacy was put at stake, it seemed to be capable of subverting the whole heteronormative system of sexual rules that continues to organize our social reality. Indeed, the fact that trans sex workers were put at the centre of the

dispute can be read as another sign of the fact that despite the legal recognition of sexual diversity, the socio-sexual imaginary continued to be profoundly heterocentric.

A few months later, *Clarín* keeps insisting: according to its view, the Code 'immediately generated discomfort among numerous neighbours because it was permissive with the transvestites who were exercising prostitution. At this point the legislators seriously took into account the people's rights to exercise their sexual preferences and ways of dressing, but they did not consider the neighbours right to their tranquillity and to have their own values respected' (*Clarín* 19 July 1998).¹⁰ Following Butler (1993), we can consider that this polarization of positions entailed the reification of the figures of 'the neighbour' and 'the trans sex worker' as social identities – who nevertheless were able, through this very conflict, to articulate themselves as political subjects – through appealing to a boundary that delimits intelligible from abjected bodies. That a phobic discourse against sexual minorities and trans people in particular could facilitate the defence of the rights of neighbours testifies to the fact that this phobic discourse, which was never treated as a problem of discrimination, called upon the implicit restrictions that the category of personhood entails for framing what is intelligible within this socio-sexual imaginary.

Already subjectified and segregated as sex workers, they were not readable as human enough, treated as if they were already socially dead. This differential subjectification that intersected with the differential subjectification produced by the heterosexual matrix – thus, the added burden of being rejected as *trans* sex workers – formed the basis of the decriminalization of sex work. The fact that sex workers were already configured in the imaginary as a social identity explains why there was not much attention given to the problem of 'their precarious condition', which is the result of the vulnerability to which the abjected ones are sub-jected (Butler 2004a, 2004b). Indeed, facing this scenario, we have to conclude that the new law, far from disarticulating the social norms that rule the socio-sexual hierarchy, galvanized those norms. And it was precisely because this field of intelligibility was not strongly contested by the new legal frames but sustained by them, as we shall see, in the face of protests against the decriminalization of sex work, the legislators decided to modify the law.

But the first and persistent difficulty with which the legislators were faced when having to modify the Code was that they did not know what they should try and institute through their rules. If according to the modern Criminal Law Focused on Acts, it is the damage that an act may produce that qualifies any act as punishable, what would be in this case the punishable act? What aspects of the act – the act of offering or requesting sexual services – should be considered harmful and for whom? Would it be something harmful in the content of the act or in the way the act might occur? Which members of the community would be effectively affected by street sex work activities? The

problem for sanctioning a rule concerning sex work was that it was necessary to establish in which way it could be harmful either for a third party or for the community. And these queries proved not easy to answer.

The first proposal was elaborated according to a liberal point of view. According to this view, the new rule would be included in the chapter on 'Use of Public Space', and in this frame, it would punish:

(T)he attitude of disturbing and altering the use of the public space or public peace, exceeding the normal tolerance and altering the conditions of coexistence through sexual manifestations offensive to third parties, being it via the excessive concentration of people or the performance of obscene conduct.

(*Clarín* 13 June 1998)¹¹

Although this first version was highly problematic since it was not at all clear what constitutes an offensive sexual performance, it had the advantage of maintaining indifference toward the question of whether or not the obscene gesture had to do with (or was an outcome of) sex work. This first version was trying to punish acts and not people; in addition, it was intended to counter the demonization of sex work, separating the gestures that could be obscene from any condition of these gestures (including conditions of work that gave rise to such gestures). This proposal, however, did not succeed since what was at stake in demanding the re-criminalization of sex work was precisely the idea that sex work itself was obscene or offensive. After an intense debate that lasted some months, the law was modified and a new article concerned specifically with sex work was finally passed on the 2 July 1998. The new law stated the prohibition in the following way:

Chapter VIII. Use of Public Space

Art. 71. Breach of public tranquillity. Disturb public tranquillity in the proximities or in front of homes, educational institutions or temples by the exercise of prostitution and as a result of its concentration, noises or the disruption of traffic, or when harassing or exhibiting in underwear or naked . . .

(Law 42, Art. 16, 2/VII/98)

This law pretended to evade the prohibition of street sex work as such, and its purpose was to provide a framework for punishing only those cases that disturbed public peace through exhibitionism, concentration, and the like. The intention was to subscribe to the modern version of democratic law and punish sex work for the damages it might entail if practiced in certain ways, and not as a harmful or offensive activity in itself. However, as long as this article punished the disturbances of public peace only when it was proved to be the effect of 'prostitution', it contradicted its own principles. In any case, it

remained true that the article did not affirm that 'prostitution' necessarily entails a breach of peace. Instead, it only affirmed that 'prostitution' could disturb public peace. But as long as it is exclusively 'prostitution' that can serve as a cause for such disturbances, and as long as such disturbances were already punishable under other articles of this very same Code, what was finally the rationale for this new law? It became apparent that for this particular article to make any sense on its own, there should be a previous and implicit determination that 'the exercise of prostitution' could be, in principle, something different from the modes in which it might appear in public space. If no distinction could be made, then any public display of prostitution becomes reducible to a 'public disturbance'.

This point of view allows us to read this article as a means for rendering street sex work invisible; this way of delimitating the acceptable ways in which sex work may appear in public space is sustained by certain presuppositions about what sex work is about. This implicit definition has an active role in the regulation of sex work. According to the legal proposal that was finally passed, it seems that sex work could be exercised in public spaces only as long as it does not appear as such. Public space can be used for the exercise of sex work as long as its practice does not show that sex work is taking place. Moreover, to punish the exercise of certain acts in public spaces because they are a mode of exercising sex work instead of deeming them as punishable acts in any and all circumstances, supposes that street sex work is ostensibly identifiable as such, and this is related to the fact that it has been equally necessary to produce a segregated mode of subjectivation, reifying certain individuals as 'prostitutes' – either bio- or trans-women – which implicitly refers to a certain way of appearing in public space. It is only by relying on a reified notion of the public appearance of street sex work and consequently of sex workers that certain acts could become punishable specifically as a consequence of 'the exercise of prostitution'.

This reification became possible as a result of the power of naming that also turned sex work into 'the exercise of prostitution'. Sex work understood as an illegalized and therefore submerged economic activity is re-described here as a social practice that stigmatizes the actors involved in this economy as either people who exercise, practice or – as in other cases – are subjected to prostitution understood as a condition of existence.¹² We can see here a parallel operation to the one underlined by Judith Butler (1997) with regards to the expansive logic of naming in relation to the US military regulations of 1993. In this case, however, the displacement from the economic activity of sex work to the 'exercise of prostitution' suggests that this exercise is something distinct and permanent, related to given notions of sexual behaviour. Apart from the fact that the signifier prostitution already implies the notion of misconduct or wrongdoing, as a verb, 'to prostitute' also takes us to the idea of 'to corrupt', and then to the idea of being prostituted/being corrupted. Therefore, this displacement produces a conversion that first, turns

sex work into a negative sexual conduct, secondly, turns this conduct into a status of a repudiated sexuality, and finally, turns this sexuality into the defining trait of a segregated identity.

At this point it becomes clear how we might understand the effort to control the visibility of the sexual field within public space. The law was addressing the need – obviously in terms more moral than civic – for regulating to what degree and in which ways certain activities – metonymically expanded to certain practices and then to certain class of subjects (Butler 1997) – could become visible within the public domain. This presupposition of the law was that street sex work, through its public existence, evokes and makes visible a repudiated sexuality, even as the law sought to re-instate this very repudiation. As a result, the debates were focused precisely on the different ways of giving a democratic legal form to this disavowal. Within this framework, and in accord with a normative view of sexuality, ‘prostitution’ came to signify the space of a repudiated sexuality, and the legal formula worked as a means for instating this disavowal by which a certain imagined ‘normal sexuality’ could then be stabilized.

Performativity of sex work and spatiality

Still, this law was highly contested by the conservative sectors. As soon as it was passed, its critics found that the law left a ‘legal void’. But where was this void? What was legally negated? The legal void appeared as long as the law failed to grasp street sex work as something separate from its possibly harmful modes of appearance. There was something else, beyond this legal field of punishment that the critics wanted to grasp, namely the core sexual acts that street sex work entails. It was as if they wanted to contain the essence in the name, and so by militating against the public appearance of sex work as something different from the name, they could effect the total prohibition of sex work. After long and intensive debates that took up the better part of a year, the law was modified again in March of 1999:

Chapter VIII. Use of Public Space

Art. 71. Breach of public tranquillity. Offer of, or demand for, sexual services for oneself or for others within public spaces.

(Law 162, BOE 647, 8/III/99)

With this text, the law pretended to be more precise and tough. This second version of the law taught us that contrary to the former legal statement, sex work as such is against the public interest. According to this last version of the law, the very act of offering or demanding sexual services offends the moral-visual urban landscape that the state is imagining for its citizens. As far as its goal is concerned, this law was intended to reconfigure sex work as an illegal

activity and therefore punishable in every case and in all circumstances – and not only in those in which an obscene image may appear. With this objective in mind, legislators discounted the particular conditions under which this act would be punishable. The fantasy at play was the following: isolated from any context and all conditions, the pure act could provide a more general concept of sex work that could be extended to all possible instances. Therefore, it redefined sex work or the exercise of prostitution as an isolated act identifiable independent of any condition or context. It was as if the force of the definition could give to these isolated acts an ontologically indisputable and unchangeable status.

This discussion of the legal efforts to define and restrict sex work leads us to consider the performativity of sex work at least in two senses: first, we can understand sex work as an activity that has been reconfigured performatively as a legal construct, and secondly, we can understand this legal construct as implying a series of consequences – and in this way it would work performatively – for the configuration of certain imaginary notions, such as the public space, the family, the nation, the citizen, which are central to the differential modes of subjectification.¹³

With regards to the first dimension, we can now maintain that sex work has been performatively reconfigured as an illegitimate or punishable practice through governmental mechanisms. As we have seen in the laws we have described so far, sex work was performatively instituted through the legal definitions and prohibitions themselves. Actually, what becomes apparent in the last version of the law, in contrast with the former two versions, is the very redefinition of sex work. Whereas in the former versions, the offensive character of sex work was only one possible outcome, in this last version, offensiveness becomes an essential feature of the identity of sex work itself. And it is as a result of this redefinition that sex work as an illegal activity not only would be re-configured, but also would lead to peculiar possibilities for the subversion of these legal aims. To show the way in which the law produced an unexpected outcome, let me explain how the iterability of the law has worked in this context.

In parallel to the dynamic of the former version of the law, this latter version activated the expansive logic of naming through a similar operation. Again, following Butler (1997), we can assume that what was at stake here is the conflation of 'the act' into the exercise of prostitution and most of all to the appearance of the already reified sex workers as beholders of a stigmatized and readily recognizable social identity, which actually sustained the efficacy of this law. Proof that the law was based on the presumptive recognizability of certain subjects can be found in the fact that the law proved to be impossible to apply since it was not possible finally to find sufficient evidence in the visual field that could establish 'the offer or the demand' as an isolated pure and de-contextualized act by any third party who was not taking part in the presumptive exchange. The very same magic conceded to the legal power of

naming as it sought to fix and then produce an ontological reality as an isolated and discrete act displayed its vulnerability to reversal: both the police¹⁴ and also the judges (the latter being mostly liberal lawyers) who were in charge of implementing the law subverted its citationality, showing that it was impossible to adduce that act in isolation from any of the circumstances of its orchestration – that is to say, the whole ritual that street-sex work involves such as certain visual and corporeal performances, a certain stylization of bodies, gestures, and the like. As a result, there was no way to establish the proof necessary for affirming that the punishable act had taken place. So the law ended up showing the contingency of naming; it would prove to be the constitutive contingency of the law – and within the same operation of power – that opened up a path for the subversion of its own imagined efficacy.

In relation to the second dimension of the performativity of sex work, as I have suggested earlier, the illegalization of sex work had worked here as a means of configuring the public character of urban space. According to this new version of the law, public peace and sex work are opposites that negate each other. In this way, this law confirms the most conservative position according to which using the public space for sex work activities is against ‘rules of coexistence’ (*normas de convivencia*). As the sub-secretary of the City Council at that moment put it: ‘What is it to alter coexistence norms? Offering sex on the street always disturbs coexistence and sex commerce on the street is obscene in itself’ (*Clarín* 13 June 1998).¹⁵ From this point of view, one of the conditions for a normal coexistence is the full exclusion of sex work from public space. Only when sex work is excluded from public space, can coexistence be guaranteed. The exclusion of sex work from public space therefore becomes a necessary condition for public coexistence, and therefore for the survivability of the community. In this way, sex work functions as a way of delimiting the public sphere that guarantees the survivability of communal values within urban space. But then, sex work ceases to be the opposite of coexistence, but, rather, becomes its precondition; the rejection of sex work proves to be the very fundament of coexistence, since it is only through this exclusion that coexistence becomes configured.

Following Doreen Massey (1999, 2007) conceptualization of spatiality, for whom space is a social relation and therefore a regulated relation, we may point out the political dimension of the multiplicity of space as constitutively open to the future and the object of an agonistic negotiation. According to Massey (1999) identity and spatiality are mutually co-constitutive and the articulation of spatiality as a determined space as we recognize it is the result of the operation of power. In this light, we can think of the articulation of sexuality and spatiality as a political struggle where the notion of boundary becomes fundamental. It is through the imaginary spatialized boundaries that urban space becomes sexualized differentially.

Seen through this framework, we can consider that these laws were giving expression to this spatialization of an imaginary boundary. To put it otherwise,

spatiality worked as the means for enacting an imaginary boundary. Moreover, in the course of taking into account the articulation between spatiality, sexuality and identity, it is also important to add that this boundary, which was at the same time imaginary and spatial, not only organized, classified and hierarchized social practices but also worked in a performative way, interpellating and therefore constituting different social subjects. The boundary enacted by these laws ran parallel with the spatialization within which the very figure of the 'neighbour' appears. Above all, this boundary is enacted when this newly constituted social construct – the neighbour – operates in direct confrontation with its other – the 'transvestite' and/or the 'prostitute'. This mechanism becomes clear in the way the media tackled this issue. Here are a few extracts in which the three most relevant national newspapers are representing the neighbours voice and that could give at least a brief idea of the way the phenomenon was characterized:

The common neighbours ... insist on that unreasonable street invasion that has been disturbing their quality of life.

(*La Nación* 24 March 1998)¹⁶

'It is unbelievable that the members of parliament take prostitution and transvestism more into account than they do the family ... We want ... transvestites to cease working at the doors of our houses', O.P. (a neighbour) said.

(*Clarín* 12 June 1998)¹⁷

The scene of the war between neighbours and transvestites enhances and finds new fronts.

(*Página 12* 12 June 1998)¹⁸

And finally, one of the slogans of the neighbours' demonstrations that emblematically summarizes the restricted conception of who has a legitimate access to rights:

Do we neighbours have to have fewer rights than transvestites?

(Reproduced by *Página 12* 7 March 1998)¹⁹

The universalistic figure of the neighbour – and its correlatives, the presumptive nuclear household and its surroundings figured by the neighbourhood and the home as personal property – became a political signifier that gave spatial expression to the more abstract figure of the ideal citizen. In this way, the moral frontier activated by the figure of the 'neighbour-ideal citizen' opened up the possibility of investing in urban spaces as public space, or even investing these public spaces as the sites in which to perform the implicit values of the public sphere that sustains the community.

There is no place to develop here all the terms of the struggles that took place after this law was passed. Suffice is to say for the purposes of this argumentation that partly because of its inapplicability and partly because during these years progressive sexual movements and leftist parties strongly argued against its derogatory effects, the law was modified again a few years later. But confirming that the rights that define the citizen and its public space continued to be heterocentric and sexually hierarchical despite the advances that were made during these years in Buenos Aires in relation to specific sexual rights, with this last version of the law – which is still in force – the improper sexuality represented by trans sex workers was finally expelled from the moral-public space.

Use of Public and Private Space

Art. 81. Offer and demand of sex in public spaces. Who ostensibly offers or demands services of a sexual character in public spaces not allowed for that purpose or under other conditions different from those under which the activity is allowed will be punished with one (1) to 5 (five) days of community work or with a fine of two hundred (\$200) to four hundred (\$400) pesos. In no case will there be sanctions according to appearance, mode of attire or manners . . .

(Law 1472 CABA 23/IX/2004, BOCBA 2055, 28/X/2004)

This law gave place to the creation of the official red light district in Buenos Aires Main Park. This area was *de facto* produced for trans sex workers, since the persecution and conflicts were directed against this group mainly while other forms of street sex work were *de facto* allowed to continue to take place as they always have done. And although not all trans sex workers have moved there, and many continue working in their traditional areas within the city, this law symbolized the exile of trans sex workers from the streets as well as their seclusion in this legally fenced-off zone as a means to guarantee certain public peace. This differential relocation of sex workers continues to raise the critical question about what menaces, disturbs or destabilizes the tranquil urban landscape of the City that the ‘neighbours’ imagine for the community (which is just their exclusionary imagined community). If the peace of this landscape is, as we have seen, the condition for a possible coexistence and therefore for the survivability of the community, does this mean that the community would be able to exist only inasmuch as it can legitimately exclude from this city landscape the presence of trans sex workers?

How can this law coexist with other laws that have been passed in Buenos Aires such as the laws that protect individuals against discrimination on the basis of gender identity, for instance?²⁰ Maybe it is the case that in so far as certain laws are addressed only to particular communities, difference can be welcomed as well as subject to the ethic of coexistence. Sexual diversity laws,

despite all their problems, conflicts, and resistances, might have a place in this democratic framework in so far as they are concerned with the defence of a particular right that does not contest in a straightforward way the centrality of the heteronormative norm. To this extent, non-normative positions could be included within the conception of citizenship and the reigning ethos of coexistence. But this democratic frame seems more resistant to any challenge to the centrality of the heterosexual matrix though, and therefore resistant to changing its conception of, for instance, the moral public space or the ideal normative citizen – thought in an imaginary way as the monogamous heterosexual individual non-consumer of sexual services, representative of this also normative nuclear family – signified as the neighbour (either a bio-man or a bio-woman) and its territory.

Democratic boundaries?

This reordering of the sexualization of urban spaces conforms to a normative definition of public space and, in this sense, it reveals that as much as this legal-imaginary effort was about determining the different degrees of visibility according to a (nineteenth century) moral scale governing the legitimacy of the different sexualities, it was also about the spatialization of the moral boundary that sustains the centrality of normative heterosexuality for imagining citizenship.

Crystallized in the image of trans sex workers, sex work seemed to function in this context as a means by which the whole of social space was sexually regulated. Through its semi-clandestine character and its ambiguous visibility, sex work establishes itself as a 'grey zone' at the margins of legality – which, in Foucaultian terms, could be understood as an illegality impossible fully to repress – (Foucault 1975/1995), or when marginally legal, hovering at the borders of sexual legitimacy. This imaginary 'in between' is spatialized as a red light district (either official and not) and as such, it also spatializes the boundary that secures an imaginary normative sexual space, conceived as uncontaminated. Hence, defining the legal status of sex work turned out to be critical for the community because it was never just about determining whether sex work should be allowed to take place in public space or in what forms it could be practiced, in the case that it is permissible within the public space; more crucially, this legal determination was engaged in defining the very sexual shape of public space.

The discussions about the law lead us then to think about the performativity of sex work as it configures the imaginary shape of public space, revealing that sex work is fundamental to the constitution of the public domain, especially in its spatial materialization. Following Foucault's classic scheme (1976/1990), we can also see that it is only by producing certain

practices as either illegal or illegitimate that an original normative sexuality can appear as such, without any need to be defended. The law produces the boundary that would define retrospectively certain practices as always already normal and others as always already deviated. So that contradicting both the spatial delimitation of the law and the spatial social fantasies the law entails, sex work does not so much *confront* the normative socio-sexual imaginary as its opposite. On the contrary, sex work is the Other that works as the pillar and guarantor of the normative socio-sexual imaginary.

The production of boundaries enacted by urban sexual regulation – the normative ways in which the urban space can be sexualized – construct the social practice of sex work as something opposed to public interest and common goals. Therefore, the production of these boundaries configures public space as the realization of the common good and qualifies that space as a moral one. The debate on street sex work, that is to say, the debate concerning whether sex work ought to take place in the public space or not, was putting at stake the very same definition of public space. As a moral space in which an imaginary citizen is built, the figure of public space works together with that of sex work, in so far as the latter functions here as a marker for what deserves to be public and what does not. Therefore, through its inclusive exclusion, its invisibilization or, indeed, its production as a semi-clandestine space, sex work is in fact a key piece for constituting what the public space can be.

This dynamic leads us to consider that the production of a constitutive exterior (Laclau 1994), or to put it otherwise, the exclusion that configures intelligibility (Butler 1993) is also materialized through the spatialization of moral and cultural boundaries (a very spatial notion, indeed!) as evidenced in this case about sex work. The public interpellation of sex workers was performed through the establishment of boundaries that materialized a spatial (and certainly also a visual) field that limited the access of sex workers to those entitlements that would qualify them as subjects of rights. In this way, this debate that implied a contest over the definition of public space and its moral limits instituted a spatial boundary that also demarcated the restrictions on citizenship and therefore, the limits of democracy.

Notes

- 1 The official title of this Code is '*Código Contravencional de la Ciudad Autónoma de Buenos Aires*', but due to its first lines where it sets its goals, it has been addressed as '*Código de Convivencia Urbana*' – 'Code of Urban Coexistence'.
- 2 The National Criminal Code of Argentina does not catalogue sex work as a crime, but it does include as a crime 'the exploitation of prostitution' (Arts. 126 and 127, National Criminal Code). Independent street sex work as such is not directly criminalized, but it is sanctioned indirectly within the local

codes, through figures such as 'Scandal in public venues', 'Disturbance of public tranquillity', 'Offence to public moral, decorum and decency', among others.

- 3 According to the 'National Report on the Situation of Transvestites, Transsexuals and Transgenderers' of 2007 – '*Informe nacional sobre la situación de travestis, transexuales y transgéneros*' – published by ALLITT (Asociación de lucha por la identidad Travesti-Transsexual) (Berkins 2008, pp. 61–131), 54.5 percent reported suffering aggressions at the police station. Regarding police abuse, 85 percent were detained illegally, 61 percent were beaten, 55 percent had suffered sexual abuse, 28 percent were asked for bribes, 18 percent were tortured, 14 percent were cursed, and 19 percent had suffered other kinds of abuse.
- 4 In the Argentinean context of that time, 'transvestite' referred either to what according to the normalization of these terms within the international community is defined either as transsexual or transgender people (in this context from male to female). With regards to the signifier transvestite, it is important to note that although within popular culture and the media it works as a pejorative term, it is also used within trans communities to vindicate and reappropriate the name. According to the 'City Council Report on the Situation of Buenos Aires Transvestites' of 1999 – '*Informe sobre la situación de las travestis en la Ciudad de Buenos Aires*' (Defensoría del Pueblo, 1999) – 54 percent identified themselves as transvestites, 13 percent as transsexuals, 12 percent as women, 3 percent as men and 17 percent chose others categories. It is necessary to remark that the term 'transgender' was not massively and publicly incorporated in the local context until approximately 2000.
- 5 In all cases, I have translated the newspaper extracts and the legal texts.
- 6 http://www.lanacion.com.ar/Archivo/Nota.asp?nota_id=90136 (accessed 6 December 2007).
- 7 <http://www.clarin.com/diario/1998/03/05/e-04101d.htm> (accessed 5 November 2008).
- 8 <http://www.clarin.com/diario/1998/03/04/e-03901d.htm> (accessed 5 November 2008).
- 9 These 'figures' function as a rhetorical turn in public discourse that seizes upon the referent to produce a field of signification that invest the referent with a whole set of meanings.
- 10 <http://www.clarin.com/diario/1998/07/19/i-01801d.htm> (accessed 8 December 2007).
- 11 <http://www.clarin.com/diario/1998/06/13/e-05601d.htm> (accessed 8 December 2007).
- 12 Let me underscore here that I do not dismiss the different situations in which the sex industry works and profits from this illegality, for example, by setting up extreme and, indeed, unacceptable conditions and means of exploitation. But I am not referring in the context of this article to the traffic

in children and/or young women for instance, but only to independent street sex work. Sex work as well as the sex-industry are complex signifiers that gather together many different social constellations, and I do not think it is useful to make homologous these very diverse social phenomena for the best understanding of how they work.

- 13 Unfortunately, it is not possible to develop all these instances in the framework of this article. Here I will only refer to the configuration of a normative public space and its correlative 'suitable citizen', but let me note that this logic of spatialization of the hegemonic sexual-imaginary that I am describing is entangled with other social constructs where space and identity are articulated producing exclusionary ideal modes of subjectivation such as 'the nuclear family and the privatized household', 'the good neighbour and its neighbourhood', 'the anonymous street and the city' as a place of compelling diversity, 'the nation and its ideal nationals' together with its borders and its 'others'. This issue is developed in my previous work (Sabsay 2009).
- 14 I cannot develop here the reasons why the police refused to impose this law. Suffice it to say that the explicit police intention was to boycott the law for spurious reasons; their rejection of the law was motivated by their desire to regain the position of power they enjoyed in the time of the Edicts to extort sex workers, something that became unfeasible in this newer framework since the power to determine whether there was a crime and proceed to arrest sex workers was taken out of the hands of the police and given over to the judges. I develop this further in my PhD thesis, *El sujeto de la performatividad: narratives, bodies and politics within the limits of gender*, Servicio de Publicaciones de la Universitat de València, 2009.
- 15 <http://www.clarin.com/diario/1998/06/13/e-05601d.htm> (accessed 8 December 2007).
- 16 http://buscador.lanacion.com.ar/Nota.asp?nota_id=91410 (accessed 7 December 2007).
- 17 <http://www.clarin.com/diario/1998/06/12/e-05101d.htm> (accessed 8 December 2007).
- 18 <http://www.pagina12.com.ar/1998/98-06/98-06-12/pag15.htm> (accessed 8 December 2007).
- 19 <http://www.pagina12.com.ar/1998/98-07/98-07-03/pag03.htm> (accessed 8 December 2007).
- 20 During this period Buenos Aires Government has passed the following laws and regulations: *Ley 1004 de Unión Civil para Parejas del Mismo Sexo* (Civil Union for Same Sex Couples) 12/XII/2002; *Resolución del Ministerio de Salud para respetar la Identidad de Género Adoptada o Autopercebida* (Resolution of the Ministry of Health on the Respect of Adopted or Auto-percibed Gender Identity) Exp. 75935/2007; *Decreto 836-D-2008 de Identidad de Género* (Gender Identity Law), CABA, 14/V/2008; *Ley 2957 Plan Marco de Políticas*

de Derechos y Diversidad Sexual (Integral Law for Implementing Rights and Sexual Diversity), CABA, 4/XII/2008, among others.

References

- Berkins, L. (2008) *Cumbia, copeteo y lágrimas. Informe Nacional sobre la situación de las travestis, transexuales y transgéneros*, Buenos Aires, ALITT.
- Butler, J. (1993) *Bodies That Matter. On the Discursive Limits of "Sex"*, London, Routledge.
- Butler, J. (1997) *Excitable Speech. A Politics of the Performative*, London, Routledge.
- Butler, J. (2004a) *Undoing Gender*, New York, Routledge.
- Butler, J. (2004b) *Precarious Life. The Power of Mourning and Violence*, London, Verso.
- Centro de Estudios Legales y Sociales (1998a) *Las reformas policiales en Argentina*, Buenos Aires, CELS Documentos de Trabajo.
- Centro de Estudios Legales y Sociales (1998b) *Detenciones, facultades y prácticas policiales en la Ciudad de Buenos Aires*, Buenos Aires, CELS Documentos de Trabajo.
- Defensoría del Pueblo (1999) *Informe preliminar sobre la situación de las travestis en la Ciudad de Buenos Aires*, Buenos Aires, Defensoría del Pueblo & ALITT.
- Foucault, M. (1995) *Discipline and Punish. The Birth of the Prison*, trans. A. Sheridan, New York, Vintage Books (originally published 1975).
- Foucault, M. (1990) *The History of Sexuality. Vol. I: An Introduction*, trans. R. Hurley, New York, Vintage Books (originally published 1976).
- Laclau, E. (1994) *The Making of Political Identities*, London, Verso.
- Massey, D. (1999) 'Philosophy and politics of spatiality: some considerations', in *Power-geometries and the Politics of Space-Time*, eds D. Massey *et al.*, Heidelberg, Department of Geography, University of Heidelberg, pp. 265–292.
- Massey, D. (2007) *World City*, Cambridge, MA, Polity Press.
- Rubin, G. (1984) 'Thinking sex: notes for a radical theory of the politics of sexuality', in *Pleasure and Danger: Exploring Female Sexuality*, ed. C. Vance, Boston, MA, Routledge and Keagan Paul, pp. 267–319.
- Sabsay, L. (2009) *Las normas del deseo. Imaginario sexual y comunicación*, Madrid, Cátedra.
- Tiscornia, S. (ed.) (2004) *Burocracias y violencias. Estudios de antropología jurídica*, Buenos Aires, FyL-UBA.
- Zaffaroni, E. (1998) *En torno de la cuestión penal*, Buenos Aires, B de F Editores.